

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 149

Introduced by Aguilar, 35; Byars, 30; Cornett, 45; Kruse, 13;
McDonald, 41; Price, 26; Schimek, 27; Stuhr, 24;
Stuthman, 22

Read first time January 7, 2005

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to methamphetamine production; to amend
2 sections 76-2,120, 76-1417, and 76-1479, Reissue Revised
3 Statutes of Nebraska; to require disclosure of prior
4 methamphetamine production to buyers and renters as
5 prescribed; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 76-2,120, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 76-2,120. (1) For purposes of this section:

4 (a) Ground lease coupled with improvements shall mean a
5 lease for a parcel of land on which one to four residential
6 dwelling units have been constructed;

7 (b) Purchaser shall mean a person who acquires, attempts
8 to acquire, or succeeds to an interest in land;

9 (c) Residential real property shall mean real property
10 which is being used primarily for residential purposes on which no
11 fewer than one or more than four dwelling units are located; and

12 (d) Seller shall mean an owner of real property who sells
13 or attempts to sell, including lease with option to purchase,
14 residential real property, whether an individual, partnership,
15 limited liability company, corporation, or trust. A sale of a
16 residential dwelling which is subject to a ground lease coupled
17 with improvements shall be a sale of residential real property for
18 purposes of this subdivision.

19 (2) Each seller of residential real property located in
20 Nebraska shall provide the purchaser with a written disclosure
21 statement of the real property's condition. The disclosure
22 statement shall be executed by the seller. The requirements of
23 this section shall also apply to a sale of improvements which
24 contain residential real property when the improvements are sold
25 coupled with a ground lease and to any lease with the option to
26 purchase residential real property.

27 (3) The disclosure statement shall include language at
28 the beginning which states:

1 (a) That the statement is being completed and delivered
2 in accordance with Nebraska law;

3 (b) That Nebraska law requires the seller to complete the
4 statement;

5 (c) The real property's address and legal description;

6 (d) That the statement is a disclosure of the real
7 property's condition as known by the seller on the date of
8 disclosure;

9 (e) That the statement is not a warranty of any kind by
10 the seller or any agent representing a principal in the
11 transaction;

12 (f) That the statement should not be accepted as a
13 substitute for any inspection or warranty that the purchaser may
14 wish to obtain;

15 (g) That even though the information provided in the
16 statement is not a warranty, the purchaser may rely on the
17 information in deciding whether and on what terms to purchase the
18 real property;

19 (h) That any agent representing a principal in the
20 transaction may provide a copy of the statement to any other person
21 in connection with any actual or possible sale of the real
22 property; and

23 (i) That the information provided in the statement is the
24 representation of the seller and not the representation of any
25 agent and that the information is not intended to be part of any
26 contract between the seller and purchaser.

27 (4) In addition to the requirements of subsection (3) of
28 this section, the disclosure statement shall disclose the condition

1 of the real property and any improvements on the real property,
2 including:

3 (a) The condition of all appliances that are included in
4 the sale and whether the appliances are in working condition;

5 (b) The condition of the electrical system;

6 (c) The condition of the heating and cooling systems;

7 (d) The condition of the water system;

8 (e) The condition of the sewer system;

9 (f) The condition of all improvements on the real
10 property and any defects that materially affect the value of the
11 real property or improvements;

12 (g) Any hazardous conditions, including substances,
13 materials, and products on the real property which may be an
14 environmental hazard and any knowledge of prior methamphetamine
15 production on the real property, regardless of whether the persons
16 involved in the production were convicted of any related charge of
17 drug possession or manufacturing;

18 (h) Any title conditions which affect the real property,
19 including encroachments, easements, and zoning restrictions; and

20 (i) The utility connections and whether they are public,
21 private, or community.

22 (5) The disclosure statement shall be completed to the
23 best of the seller's belief and knowledge as of the date the
24 disclosure statement is completed and signed by the seller. If any
25 information required by the disclosure statement is unknown to the
26 seller, the seller may indicate that fact on the disclosure
27 statement and the seller shall be in compliance with this section.
28 On or before the effective date of any contract which binds the

1 purchaser to purchase the real property, the seller shall update
2 the information on the disclosure statement whenever the seller has
3 knowledge that information on the disclosure statement is no longer
4 accurate.

5 (6) This section shall not apply to a transfer:

6 (a) Pursuant to a court order, a foreclosure sale, or a
7 sale by a trustee under a power of sale in a deed of trust;

8 (b) By a trustee in bankruptcy;

9 (c) To a mortgagee by a mortgagor or successor in
10 interest or to a beneficiary of a deed of trust by a trustor or
11 successor in interest;

12 (d) By a mortgagee, a beneficiary under a deed of trust,
13 or a seller under a land contract who has acquired the real
14 property at a sale conducted pursuant to a power of sale under a
15 deed of trust, at a sale pursuant to a court-ordered foreclosure,
16 or by a deed in lieu of foreclosure;

17 (e) By a fiduciary in the course of the administration of
18 a decedent's estate, guardianship, conservatorship, or trust except
19 when the fiduciary is also the occupant or was an occupant of one
20 of the dwelling units being sold;

21 (f) From one or more co-owners to one or more other
22 co-owners;

23 (g) Made to a spouse or to a person or persons in the
24 lineal line of consanguinity of one or more of the transferors;

25 (h) Between spouses resulting from a decree of
26 dissolution of marriage or a decree of legal separation or from a
27 property settlement agreement incidental to such a decree;

28 (i) Pursuant to a merger, consolidation, sale, or

1 transfer of assets of a corporation pursuant to a plan of merger or
2 consolidation filed with the Secretary of State;

3 (j) To or from any governmental entity;

4 (k) Of newly constructed residential real property which
5 has never been occupied; or

6 (l) From a third-party relocation company if the
7 third-party relocation company has provided the prospective
8 purchaser a disclosure statement from the most immediate seller
9 unless the most immediate seller meets one of the exceptions in
10 this section. If a disclosure statement is required, and if a
11 third-party relocation company fails to supply a disclosure
12 statement from its most immediate seller on or before the effective
13 date of any contract which binds the purchaser to purchase the real
14 property, the third-party relocation company shall be liable to the
15 prospective purchaser to the same extent as a seller under this
16 section.

17 (7) The disclosure statement and any update to the
18 statement shall be delivered by the seller or the agent of the
19 seller to the purchaser or the agent of the purchaser on or before
20 the effective date of any contract which binds the purchaser to
21 purchase the real property, and the purchaser shall acknowledge in
22 writing receipt of the disclosure statement or update.

23 (8) The seller shall not be liable under this section for
24 any error, inaccuracy, or omission of any information in a
25 disclosure statement if the error, inaccuracy, or omission was not
26 within the personal knowledge of the seller.

27 (9) A person representing a principal in the transaction
28 shall not be liable under this section for any error, inaccuracy,

1 or omission of any information in a disclosure statement unless
2 that person has knowledge of the error, inaccuracy, or omission on
3 the part of the seller.

4 (10) A person licensed as a salesperson or broker
5 pursuant to the Nebraska Real Estate License Act shall not be
6 required to verify the accuracy or completeness of any disclosure
7 statement prepared pursuant to this section, and the only
8 obligation of a buyer's agent pursuant to this section is to assure
9 that a copy of the statement is delivered to the buyer on or before
10 the effective date of any purchase agreement which binds the buyer
11 to purchase the property subject to the disclosure statement. This
12 subsection does not limit the duties and obligations provided in
13 section 76-2418 or in subsection (9) of this section with respect
14 to a buyer's agent.

15 (11) A transfer of an interest in real property subject
16 to this section may not be invalidated solely because of the
17 failure of any person to comply with this section.

18 (12) If a conveyance of real property is not made in
19 compliance with this section, the purchaser shall have a cause of
20 action against the seller and may recover the actual damages, court
21 costs, and reasonable attorney's fees. The cause of action created
22 by this section shall be in addition to any other cause of action
23 that the purchaser may have. Any action to recover damages under
24 the cause of action shall be commenced within one year after the
25 purchaser takes possession or the conveyance of the real property,
26 whichever occurs first.

27 (13) The State Real Estate Commission shall adopt and
28 promulgate rules and regulations to carry out this section.

1 Sec. 2. Section 76-1417, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 76-1417. (1) The landlord or any person authorized to
4 enter into a rental agreement on his or her behalf shall disclose
5 to the tenant in writing at or before the commencement of the
6 tenancy:

7 (a) Any knowledge of prior methamphetamine production
8 within the rental unit or a contiguous rental unit, regardless of
9 whether the persons involved in the production were convicted of
10 any related charge of drug possession or manufacturing; and

11 (b) The ~~the~~ name and address of:

12 ~~(a)~~ (i) The person authorized to manage the premises; and

13 ~~(b)~~ (ii) An owner of the premises or a person authorized
14 to act for and on behalf of the owner for the purpose of service of
15 process and for the purpose of receiving and receipting for notices
16 and demands.

17 (2) The information required to be furnished by this
18 section shall be kept current and this section extends to and is
19 enforceable against any successor landlord, owner, or manager.

20 (3) A person who fails to comply with subsection (1) of
21 this section becomes an agent of each person who is a landlord for
22 the purpose of:

23 (a) Service of process and receiving and receipting for
24 notices and demands; and

25 (b) Performing the obligations of the landlord under the
26 Uniform Residential Landlord and Tenant Act and under the rental
27 agreement and expending or making available for the purpose all
28 rent collected from the premises.

1 Sec. 3. Section 76-1479, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 76-1479. (1) A landlord or any person authorized to
4 enter into a rental agreement on his or her behalf shall disclose
5 to the tenant in writing at or before the commencement of the
6 tenancy any knowledge of prior methamphetamine production within
7 the mobile home, regardless of whether the persons involved in the
8 production were convicted of any related charge of drug possession
9 or manufacturing.

10 (2) A landlord may offer a tenant the opportunity to sign
11 a written rental agreement for a mobile home space. The landlord
12 or any person authorized to enter into a rental agreement on his or
13 her behalf shall disclose to the tenant in writing at or before
14 entering into the rental agreement the name and address of:

15 ~~(1)~~ (a) The person authorized to manage the mobile home
16 park; and

17 ~~(2)~~ (b) The owner of the mobile home park or a person
18 authorized to act for and on behalf of the owner for the purpose of
19 service of process and for the purpose of receiving and receipting
20 for notices and demands.

21 (3) The information required to be furnished by this
22 section shall be kept current and refurnished to the tenant at the
23 tenant's request. Upon termination of a landlord's interest in a
24 mobile home park, the provisions of this section relating to
25 disclosure and any written rental agreements in effect at the time
26 of the termination shall extend to and be enforceable against any
27 successor landlord, owner, or manager.

28 Sec. 4. Original sections 76-2,120, 76-1417, and

LB 149

LB 149

- 1 76-1479, Reissue Revised Statutes of Nebraska, are repealed.